



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

J.R. Romano, Jr.  
Chairman, Connecticut Republican Party  
31 Pratt Street, Suite 405  
Hartford, CT 06103

SEP 05 2018

RE: MUR 7213

Dear Mr. Romano:

On August 7, 2018, the Federal Election Commission reviewed the allegations in your complaint dated January 23, 2017, and found that on the basis of the information provided in your complaint, and information provided by Respondents, there is no reason to believe Labor United for Connecticut and Paul Filson in his official capacity as treasurer ("LUC") violated 52 U.S.C. §§ 30116(f) or 30118(a) and dismissed allegations that LUC violated 52 U.S.C. §§ 30102, 30103, or 30104 and §§ 30104(b) or (c), and 30104(g). Accordingly, on August 30, 2018, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which more fully explains the Commission's findings is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

A handwritten signature in black ink, appearing to read "Jin Lee", is written over the typed name and title of the Acting General Counsel.

BY: Jin Lee  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Labor United for Connecticut  
6 and Paul Filson in his official  
7 capacity as treasurer  
8

**MUR:** 7213

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 J.R. Romano, Jr. and the Connecticut Republican Party. The Complaint in this matter alleges  
12 that Labor United for Connecticut and Paul Filson in his official capacity as treasurer ("LUC"), a  
13 Section 527 organization that was registered with the Connecticut State Elections Enforcement  
14 Commission ("CSEEC"), failed to register and report with the Federal Election Commission  
15 ("Commission") as a political committee and used non-federal funds to influence federal  
16 elections in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). In  
17 support of these allegations, the Complaint contends that LUC paid for digital advertising  
18 attacking Republican presidential candidate Donald Trump in October 2016 and therefore  
19 triggered federal political committee status, which restricted LUC to raising and spending only  
20 federal funds.<sup>1</sup> In addition, LUC failed to timely file its 2016 Year-End Report (Form 5)  
21 supporting its independent expenditures.

22 LUC asserts that its major purpose was not "the nomination or election of federal  
23 candidates," and therefore it did not meet the Act's definition of a political committee.<sup>2</sup> As to  
24 any alleged reporting violations, LUC notes that it amended and correctly filed all reports

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<sup>1</sup> Compl. at 1, Attach. 1 (Jan. 23, 2017).

<sup>2</sup> Resp. at 2 (Mar. 27, 2017).

1 regarding its independent expenditures with the Commission after receiving a Request for  
2 Additional Information (“RFAI”) from RAD and seeking the advice of counsel.<sup>3</sup> LUC does not  
3 address the allegation that it impermissibly used state funds to oppose a federal candidate.

4 As set forth below, even if 50% of LUC’s overall spending was for federal campaign  
5 activity (*i.e.*, the nomination or election of a Federal candidate), LUC was only active for a little  
6 over one month, having been established in September 2016 and terminated with the CSEEC in  
7 December 2016. During that time, LUC raised approximately \$198,000,<sup>4</sup> \$48,750 of which was  
8 spent on one media buy,<sup>5</sup> and the bulk of its contributions (approximately \$109,400) were  
9 refunded.<sup>6</sup> Considering these facts, and in furtherance of the Commission’s priorities and  
10 resources relative to other matters, the Commission exercises its prosecutorial discretion and  
11 dismisses the allegations that LUC failed to register and report as a political committee in  
12 violation of 52 U.S.C. §§ 30102, 30103, or 30104(a),<sup>7</sup> and that LUC failed to timely report

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<sup>3</sup> *Id.* at 4; Although LUC had timely filed a 48-Hour Report (originally mislabeled as a 24-Hour Report) disclosing its independent expenditures, on February 17, 2017, RAD sent LUC an RFAI to inform LUC that it had failed to file a Year-End Report. LUC, Request for Additional Information (Feb. 17, 2017). LUC later filed a 2016 Year-End Report on March 7, 2017. *See infra* pp. 10-11.

<sup>4</sup> LUC, CSEEC Termination Report (Dec. 7, 2016) at 2, [http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40\\_Termination\\_Report\\_for\\_Independent\\_Expenditure\\_Political\\_Action\\_Committees\\_\(Non\\_Standard\)\\_45358.PDF](http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_Termination_Report_for_Independent_Expenditure_Political_Action_Committees_(Non_Standard)_45358.PDF).

<sup>5</sup> LUC, CSEEC 24 Hour Independent Expenditure General Election-Amendment (Oct. 21, 2016) at 9, [http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40\\_24\\_Hour\\_Independent\\_Expenditure\\_General\\_Election\\_43394.PDF](http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_43394.PDF); *see also* LUC, 24-Hour Report of Independent Expenditures (“LUC 24-Hour Report”) (Oct. 17, 2016).

<sup>6</sup> LUC, CSEEC Termination Report at 6-12.

<sup>7</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 independent expenditures in accordance with 52 U.S.C. § 30104(b) or (c), and 30104(g).<sup>8</sup>

2 Further, the Commission finds no reason to believe that LUC violated 52 U.S.C. §§ 30116(f) or  
3 30118(a) by accepting or spending non-federal funds.

## 4 II. FACTS

5 LUC was formed by the SEIU Connecticut State Council as an Internal Revenue Code  
6 section 527 political organization and registered with CSEEC as an independent  
7 expenditure-only political committee.<sup>9</sup> According to its treasurer, the purpose for creating LUC  
8 was to “raise and spend funds on independent expenditures concerning Connecticut state  
9 legislative races.”<sup>10</sup> The organization was established on September 22, 2016,<sup>11</sup> and ceased  
10 activity just over one month later, on October 26, 2016.<sup>12</sup> LUC terminated its registration with  
11 CSEEC on December 7, 2016, and with the Internal Revenue Service (“IRS”) on January 31,  
12 2017.<sup>13</sup>

13 In its existence, LUC raised \$198,071.32, spent \$88,682.74, and refunded the remaining  
14 \$109,388.58 it had raised to its contributors.<sup>14</sup> LUC spent \$48,750.01 on what appears to be its

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<sup>8</sup> See *id.*

<sup>9</sup> Resp., Aff. of Filson ¶ 2-3; LUC, CSEEC Registration (Sept. 22, 2016)  
[https://seec.ct.gov/eCrisReporting/pdfviewer.aspx/noscan.pdf/SEEC8\\_10486\\_201609221411.PDF](https://seec.ct.gov/eCrisReporting/pdfviewer.aspx/noscan.pdf/SEEC8_10486_201609221411.PDF).

<sup>10</sup> Resp., Aff. of Filson ¶ 2.

<sup>11</sup> *Id.* ¶ 3.

<sup>12</sup> *Id.* ¶ 5.

<sup>13</sup> LUC, CSEEC Termination Report (Dec. 7, 2016) at 1; Resp., Aff. of Filson ¶ 6. LUC’s former treasurer retained counsel, filed reports, and responded on LUC’s behalf since its termination date.

<sup>14</sup> LUC, CSEEC Termination Report at 2, 6-12 (Dec. 7, 2016); LUC, CSEEC 24 Hour Independent Expenditure General Election-Amendment at 9 (Oct. 21, 2016); LUC, CSEEC 24 Hour Independent Expenditure General Election 3 at 6 (Oct. 21, 2016), [http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40\\_24](http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24)

1 only media buy,<sup>15</sup> a series of web ads distributed beginning October 17, 2016.<sup>16</sup> LUC disclosed  
2 its spending for those ads in its 24-Hour Independent Expenditure Report filed with the  
3 Commission on October 17, 2016.<sup>17</sup> LUC received an RFAI from RAD on February 17, 2017,  
4 regarding its failure to file a corresponding Form 5 fourth quarter or “Year-End” Report for  
5 2016.<sup>18</sup> On March 7, 2017, LUC responded, filing a 2016 Year-End Report that reflected the  
6 portion of the total media buy expense that LUC believed should have been allocated to federal  
7 activity under Commission regulations.<sup>19</sup> On March 8, 2017, LUC amended its 24-Hour Report,  
8 as a 48-Hour Report, and listed \$20,317 in independent expenditures, which also reflected  
9 LUC’s allocation between state and federal activity.<sup>20</sup> The following chart summarizes LUC’s  
10 disbursements:

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Hour Independent Expenditure General Election 3 43284.PDF; LUC, CSEEC 24 Hour Independent  
Expenditure General Election 5 – Amendment at 7 (Nov. 1, 2016), [http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40\\_24\\_Hour\\_Independent\\_Expenditure\\_General\\_Election\\_5\\_44358.PDF](http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_5_44358.PDF).

<sup>15</sup> CSEEC 24 Hour Independent Expenditure General Election-Amendment at 9 (Oct. 21, 2016).

<sup>16</sup> LUC, 48-Hour Report at 3 (Mar. 8, 2017) (“LUC 48-Hour Report”).

<sup>17</sup> LUC 24-Hour Report (Oct. 17, 2017) (“LUC 24-Hour Report”).

<sup>18</sup> LUC, Request for Additional Information (Feb. 17, 2017).

<sup>19</sup> LUC, Year-End Report (Mar. 7, 2017) (“LUC 2016 Year-End Report”).

<sup>20</sup> LUC, 48-Hour Report; *see Resp.* at 3-4 (citing 11 C.F.R. § 106.1(a)).

<b>LUC Disbursements</b>	
Contribution Refunds	\$109,388.58
Bank Fees	\$112.95
Public Communications	\$48,750.01
Polling	\$6,646.50
Consulting	\$33,173.28
<b>Total</b>	<b>\$198,071.32</b>

1  
2 LUC contends that its organizational purpose was to elect pro-union legislators to the  
3 Connecticut state legislature.<sup>21</sup> Moreover, it states that at the time of its formation, "LUC had no  
4 intention to carry out public communications or any other activities with respect to federal  
5 elections."<sup>22</sup> LUC explains that at the recommendation of a political consultant, however, it  
6 determined that it would be advantageous as part of its media strategy to tie state candidates to  
7 then-Republican presidential candidate Trump, who they believed to be unpopular with  
8 Connecticut voters.<sup>23</sup>

9 According to the Response, LUC's only media buy was composed of three web ads that  
10 were rotated equally.<sup>24</sup> The first contained no references to Trump or any other federal  
11 candidate.<sup>25</sup> The second ad included a picture of Trump and the text: "Stop Donald Trump and  
12 Republican [rotating state legislative candidate]'s attack on women and families Vote on 11/8."<sup>26</sup>

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<sup>21</sup> Resp., Aff. of Filson ¶ 9.

<sup>22</sup> *Id.* ¶ 10.

<sup>23</sup> Resp. at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, Attach. A.

<sup>26</sup> *Id.*, Attach. B.

1 The third ad included a picture of a woman's hand with the word "NO" written on it and the text:  
2 "NO to the vicious Trump campaign against women and families. Vote NO on Trump and  
3 Republican [rotating state legislative candidate] Nov. 8."<sup>27</sup>

### 4 III. LEGAL ANALYSIS

#### 5 A. Political Committee Status

6 The Act and Commission regulations define a "political committee" as "any committee,  
7 club, association or other group of persons which receives contributions aggregating in excess of  
8 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
9 during a calendar year."<sup>28</sup> In *Buckley v. Valeo*,<sup>29</sup> the Supreme Court held that defining political  
10 committee status "only in terms of the annual amount of 'contributions' and 'expenditures'"  
11 might be overbroad, reaching "groups engaged purely in issue discussion."<sup>30</sup> To cure that  
12 infirmity, the Court concluded that the term "political committee" "need only encompass  
13 organizations that are under the control of a candidate or the *major purpose of which is the*  
14 *nomination or election of a candidate*."<sup>31</sup> Accordingly, under the statute as thus construed, an  
15 organization that is not controlled by a candidate must register as a political committee only if  
16 (1) it crosses the \$1,000 threshold and (2) it has as its "major purpose" the nomination or election  
17 of federal candidates.

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<sup>27</sup> *Id.*, Attach. C.

<sup>28</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a).

<sup>29</sup> 424 U.S. 1 (1976).

<sup>30</sup> *Id.* at 79.

<sup>31</sup> *Id.* (emphasis added).

1 Here, even if LUC had triggered political committee status, LUC was only active for one  
2 month, and during that time made only one media buy, worth \$48,750.01. Further, LUC  
3 refunded most of the contributions it accepted and substantially disclosed its independent  
4 expenditures for the public record.

5 Under these circumstances, the Commission does not believe that this matter merits the  
6 use of further agency resources and dismisses as a matter of prosecutorial discretion the  
7 allegations that LUC violated 52 U.S.C. §§ 30102, 30103, or 30104 by failing to register and  
8 report as a political committee.<sup>32</sup>

9 **B. Use of Impermissible Funds**

10 The Complaint also alleges that LUC violated the Act by spending non-federal funds to  
11 support or oppose a federal candidate.<sup>33</sup> Even if LUC was in fact a federal political committee, it  
12 appears to have acted as an independent expenditure-only political committee, which could have  
13 accepted (and spent) contributions in unlimited amounts and from some otherwise prohibited  
14 sources.<sup>34</sup>

15 An independent expenditure is an expenditure that expressly advocates the election or  
16 defeat of a clearly identified federal candidate and that is not made in concert or cooperation  
17 with, or at the request or suggestion of, the candidate or his or her committee or agent, or a

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<sup>32</sup> See *Heckler*, 470 U.S. 821.

<sup>33</sup> Compl. at 1.

<sup>34</sup> See Advisory Op. 2010-11 (Commonsense Ten) at 3 (citing *Citizens United*, 558 U.S. 310 and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and stating that “corporations, labor organizations, and political committees may make unlimited independent expenditures from their own funds, and individuals may pool unlimited funds in an independent expenditure-only political committee”).

1 political party committee or its agent.<sup>35</sup> Here, the Complaint fails to allege any facts indicating  
2 that LUC engaged in coordination with a federal candidate or party committee and it was  
3 registered as an independent expenditure committee with the State of Connecticut. Further, LUC  
4 asserts that it included Trump in its communications not as a result of coordination with any  
5 federal candidate, but on the advice of a consultant in order to persuade voters who disliked  
6 Trump to oppose state legislative candidates in targeted races because they were running on his  
7 ticket. Accordingly, it appears that it would have operated as an independent expenditure-only  
8 committee that could have permissibly accepted (and spent) non-federal funds. Therefore, the  
9 Commission finds no reason to believe that LUC violated 52 U.S.C. §§ 30116(f) or 30118(a) by  
10 accepting or spending non-federal funds.

11 **C. Failure to Timely Report Independent Expenditures**

12 Under the Act, persons must file reports disclosing independent expenditures over a  
13 certain amount.<sup>36</sup> If any person, including a political committee, makes independent  
14 expenditures aggregating \$10,000 or more within a calendar year with respect to a given election  
15 any time up to and including the 20th day before the election, the person must file a 48-Hour  
16 Report disclosing those expenditures.<sup>37</sup> If the person makes independent expenditures  
17 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24  
18 hours, before the date of an election, the person must file a 24-Hour Report disclosing those

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<sup>35</sup> 52 U.S.C. § 30101(17).

<sup>36</sup> See 52 U.S.C. § 30104(b)(4)(H)(iii), (5)(B)(iii), and (c).

<sup>37</sup> *Id.* § 30104(g)(2); 11 C.F.R. § 109.10(c). The person must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

1 expenditures.<sup>38</sup> In addition to these 24-Hour and 48-Hour Reports, persons who are not political  
2 committees must file a quarterly report for any quarterly period in which independent  
3 expenditures exceed \$250 with respect to a given election and for any subsequent quarterly  
4 period during the calendar year when additional independent expenditures are made.<sup>39</sup>

5 Here, LUC did not report its independent expenditures as a political committee but as a  
6 “person (other than a political committee),” under 52 U.S.C. § 30104(c). It filed a 24-Hour  
7 Report on October 17, 2016 reporting an independent expenditure in the amount of \$48,750.01  
8 and contributions of \$172,000.<sup>40</sup> On March 7, 2017, 35 days after receiving an RFAI from RAD,  
9 LUC filed a Year-End Report,<sup>41</sup> and on March 8, 2017, LUC amended its 24-Hour Report as a  
10 48-Hour Report.<sup>42</sup> Both of those March-filed reports indicate a reduction in the amount of the  
11 independent expenditures, now reporting only \$20,317.<sup>43</sup> These reports also disclose lower

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<sup>38</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The person must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

<sup>39</sup> 11 C.F.R. § 109.10(b); *see* 52 U.S.C. § 30104(c); *see also* Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)). Political committees accomplish this disclosure via ongoing quarterly and pre- and post-election reports regular reporting of contributions and expenditures. *See* 52 U.S.C. §§ 30104(a)(4), (b). If LUC were a political committee, it should have reported its contributions and expenditures in this manner. *See supra* p. 7 (dismissing as to the allegations that LUC failed to register and report as a political committee).

<sup>40</sup> LUC 24-Hour Report.

<sup>41</sup> LUC 2016 Year-End Report.

<sup>42</sup> LUC 48-Hour Report. As the expenditure occurred more than 20 days prior to the election a 48-Hour Report was appropriate rather than a 24-Hour Report. 52 U.S.C. § 30104(g)(1) and (2).

<sup>43</sup> *Compare* LUC 24-Hour Report with LUC 2016 Year-End Report and LUC 48-Hour Report.

1 amounts of total contributions, with the 48-Hour Report indicating \$80,000 in total contributions  
2 and the Year-End Report indicating \$86,071.32 in total contributions.<sup>44</sup>

3 In its response, LUC explains that these discrepancies arose from the original 24-Hour  
4 Report being filed “without legal analysis of which contributions to report and how to divide  
5 costs between the federal and state content of the ads.”<sup>45</sup> After receiving the RFAI and  
6 Complaint in MUR 7213, LUC sought the assistance of counsel and filed the 2016 Year-End and  
7 amended 48-Hour Reports. In these later filed reports, LUC included only contributions that  
8 were “made for the purpose of financing independent expenditures” rather than all contributions  
9 to LUC.<sup>46</sup> The change in the amount of expenditures reported reflects LUC counsel’s calculation  
10 of what part of the independent expenditure LUC believed should be allocated to federal activity  
11 and what part should be allocated to state activity.<sup>47</sup>

12 These facts indicate reporting violations. First, LUC did not file its 2016 Year-End  
13 Report until March 7, 2017.<sup>48</sup> Thus, the report, which was due on January 31, 2017, was 35 days  
14 late and considered not filed.<sup>49</sup> Second, LUC failed to accurately report its independent

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<sup>44</sup> *Id.*

<sup>45</sup> Resp. at 4.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 3-4.

<sup>48</sup> The Year-End Report was due more than a month after the committee terminated under Connecticut law. The Year-End Report, and the amended 48-Hour Report, were filed on behalf of the defunct committee by Filson with the assistance of counsel he retained.

<sup>49</sup> 11 C.F.R. § 111.43(e)(1) (“Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.”).

1 expenditures in its original 24-Hour Report, which was later amended to a 48-Hour Report. This  
2 amended report reflects a decrease in contributions from \$172,000 to \$80,000 and a decrease in  
3 the amount of total expenditures from \$48,750 to \$20,317.<sup>50</sup>

4 Nevertheless, LUC is now defunct, was only active for one month, made only one media  
5 buy, and substantially disclosed its activity for the public record.

6 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the  
7 allegations that LUC failed to timely file a Year-End Report in violation of 52 U.S.C. § 30104(b)  
8 or (c) and that LUC failed to timely file a 24-Hour or 48-Hour Report accurately disclosing its  
9 independent expenditures in violation of 52 U.S.C. § 30104(g).<sup>51</sup>

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<sup>50</sup> Compare LUC 24-Hour Report with LUC 2016 Year-End Report and LUC 48-Hour Report.

<sup>51</sup> See *Heckler*, 470 U.S. 821.